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TTAB

L A W Y E R S  
R M K B  
R O P E R S M A J E S K I K O H N B E N T L E Y

Truc M. Luu  
(213) 312-2078

tluu@ropers.com

November 30, 2005

**VIA FIRST CLASS MAIL**

Commissioner for Trademarks,  
P.O. Box 1451, Alexandria,  
Virginia 22313-1451

Re: **Opposition No. 91167057**

Dear Commission of Trademarks:

Enclosed herewith please find the following:

1. Applicant's Answer to Notice of Opposition;
2. Motion for Suspension of Proceeding Pending Outcome of Federal Civil Action;
3. Self-addressed, stamped acknowledgement card to indicate receipt of the above referenced documents.

Very truly yours,



Ernie E. Price  
Truc M. Luu

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

  
\_\_\_\_\_  
Truc M. Luu

(Signature)

\_\_\_\_\_  
November 30, 2005

(Date)

Cc: Gary Tsai  
TML/cc





the remaining allegations set forth in Paragraph 2 of the Notice of Opposition and therefore denies them.

3. Applicant admits that USPTO records indicate Registration No. 2046157 became incontestable on or about February 21, 2003.

4. Applicant admits that USPTO records indicate an assignment of Registration No. 2046157 to Opposer was recorded with the USPTO on June 22, 2000 and is located at Reel 2103, Frame 0051 in the Trademark Office's records.

5. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition and therefore denies them.

6. Applicant denies the allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations of Paragraph 7 of the Notice of Opposition. Applicant's mark is for general, non-refrigerated (vacuum-packed), shelf food products, whereas Opposer's goods are for refrigerated meat products.

8. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and therefore denies them.

9. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 9 of the Notice of Opposition and therefore denies them.

10. Applicant denies the allegations of Paragraph 10 of the Notice of Opposition.

**AFFIRMATIVE DEFENSES**

In further answer to Opposer's Notice of Opposition, Applicant asserts that:

**Affirmative Defense No. 1:**

The Notice of Opposition fails to state a claim upon which relief may be granted.

**Affirmative Defense No. 2:**

Opposer was aware of Applicant's use of the mark "Que Huong" in connection with general, non-refrigerated (vacuum-packed), shelf food products for a long time, but failed to make any claim or assert any objection to such use. Accordingly, Opposer's claims are barred in whole or in part by the doctrine of acquiescence.

**Affirmative Defense No. 3:**

Opposer was aware of Applicant's use of the mark "Que Huong" in connection with general, non-refrigerated (vacuum-packed), shelf food products for a long time, but failed to make any claim or assert any objection to such use. Accordingly, Opposer has waived its rights to the relief in the Notice of Opposition by its own acts, conduct and omissions.

**Affirmative Defense No. 4:**

Opposer was aware of Applicant's use of the mark "Que Huong" in connection with general, non-refrigerated (vacuum-packed), shelf food products for a long time, but failed to make any claim or assert any objection to such use. Accordingly, Opposer's claims are barred in whole or in part by the doctrine of laches.

Affirmative Defense No. 5:

Opposer was aware of Applicant's use of the mark "Que Huong" in connection with general, non-refrigerated (vacuum-packed), shelf food products for a long time, but failed to make any claim or assert any objection to such use. Accordingly, Opposer's claims are barred in whole or in part by the doctrine of estoppel.

Affirmative Defense No. 6:

Opposer was aware of Applicant's use of the mark "Que Huong" in connection with general, non-refrigerated (vacuum-packed), shelf food products for a long time, but failed to make any claim or assert any objection to such use. Accordingly, Opposer's claims are barred in whole or in part by the doctrine of waiver.

Affirmative Defense No. 7:

Applicant's use of the mark "Que Huong" in connection with general, non-refrigerated (vacuum-packed), shelf food products is consistent with prior rights granted to Applicant for registered trademarks QUE HUONG, Registration No. 2099092 and OLDMAN QUE HUONG brand, Registration No. 2311982, both of which are incontestable. Accordingly, Opposer's claims are barred due to Applicant's consistent use of the mark for general, non-refrigerated (vacuum-packed), shelf food products similar to those for its incontestable marks.

Affirmative Defense No. 8:

Upon information and belief, the Opposer's alleged trademark is in common use by third parties unrelated to the Applicant and should receive only narrow, if any, coverage.

Affirmative Defense No. 9:

Upon information and belief, the Opposer's alleged trademark is being used to compete with and harass Applicant.

Affirmative Defense No. 10:

The respective goods of the parties have been sold concurrently in commerce in the United States for over fifteen (15) years and, to date, no instances of actual confusion have been reported to Applicant. On information and belief, due to Opposer's failure to assert actual confusion in the Notice of Opposition, it is believed that Opposer has similarly not encountered any such instances of actual confusion in the over fifteen (15) years of concurrent use of the respective marks of the parties. Under the circumstances, owing to the absence of any reported actual confusion for over fifteen years (15) of concurrent use, it is submitted that confusion between the respective marks of the parties as used for their respective goods is unlikely to occur.

Affirmative Defense No. 11:

Applicant reserves the right to rely on such other and further affirmative defenses as may be supported by the facts to be determined through full and complete discovery and to amend their Answer to assert such affirmative defenses.

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WHEREFORE, Applicant denies that Opposer is entitled to the relief which it seeks, and Applicant affirmatively asserts that it is entitled to registration of the mark "Que Huong" on the Principal Register of the United States Patent and Trademark Office. Therefore, Applicant requests the dismissal of Opposer's Opposition No. 91167057, with prejudice, and that Applicant be rewarded such other and further relief as the Trademark Trial and Appeal Board deems proper.

Respectfully submitted,

Dated: November 30, 2005

By: 

ERNEST E. PRICE (SBN 163391)  
TRUC M. LUU (SBN 227576)  
ROPERS, MAJESKI, KOHN & BENTLEY  
515 South Flower Street, Suite 1100  
Los Angeles, CA 90071  
Telephone: (213) 312-2000  
Facsimile: (213) 312-2001  
Email: eprice@ropers.com  
Email: tluu@ropers.com  
*Attorneys for Applicant*

### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

  
\_\_\_\_\_  
Truc M. Luu

\_\_\_\_\_  
TRUC M. LUU  
(Signature)

\_\_\_\_\_  
Nov. 30, 2005  
(Date)

1 **CASE NAME: DEREK & CONSTANCE LEE CORPORATION v. KIM SENG**  
2 **COMPANY**

3 **ACTION NO.: CV 05-3635 GPS (JTLx)**

4 **PROOF OF SERVICE**

5 I am a citizen of the United States. My business address is 515 South Flower Street, Suite  
6 1100, Los Angeles, CA 90071. I am employed in the County of Los Angeles where this service  
7 occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar  
8 with my employer's normal business practice for collection and processing of correspondence for  
9 mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with  
10 the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

11 On the date set forth below, following ordinary business practice, I served a true copy of  
12 the foregoing document(s) described as:

13 **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

14 ☒ **(BY FAX) by transmitting via facsimile the document(s) listed above to the**  
15 **fax number(s) set forth below, or as stated on the attached service list, on**  
16 **this date before 5:00 p.m.**

17 ☒ **(BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to**  
18 **be placed in the United States mail at Los Angeles, California.**

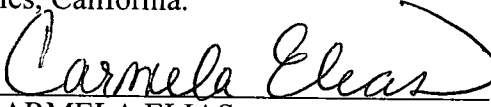
19 ☐ **(BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand**  
20 **this date to the offices of the addressee(s).**

21 ☐ **(BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an**  
22 **overnight delivery carrier with delivery fees provided for, addressed to the**  
23 **person(s) on whom it is to be served.**

24 **GARY J. NELSON**  
25 **CHRISTIE, PARKER & HALE**  
26 **P. O. Box 7068**  
27 **Pasadena, CA 91109-7068**

28 ☒ **(Federal) I declare that I am employed in the office of a member of the bar of**  
this court at whose direction the service was made.

Executed on November 30, 2005, at Los Angeles, California.

  
CARMELA ELIAS

**ENVELOPE(S):**



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DEREK & CONSTANCE LEE	)	
CORPORATION	)	
	)	
Opposer,	)	
	)	
v.	)	
	)	<b>Opposition No. 91167057</b>
	)	<b>In re Application Serial No 78/538163</b>
	)	
KIM SENG COMPANY	)	
	)	
	)	
Applicant.	)	
_____	)	

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

**MOTION FOR SUSPENSION OF PROCEEDING PENDING OUTCOME**  
**OF FEDERAL CIVIL ACTION**

Applicant, KIM SENG COMPANY, by and through its counsel, requests suspension of the foregoing proceeding pursuant to 37 CFR § 2.117(a). In support of its motion, the Applicant states the following:

1. On April 13, 2005, the opposer DEREK & CONSTANCE LEE CORPORATION, filed a Complaint in Los Angeles Superior Court, Central Division for several causes of action, including trademark infringement of the term "Que Huong". Applicant removed the action under 28 U.S.C. § 1331 on May 16, 2005 to the United

States District Court, for the Central District of California, Case No. CV 05-3635 GPS (JTLx) ("the Civil Action"). The Complaint is attached as "Exhibit A".

2. On May 20, 2005, Applicant answered the Complaint and counterclaimed for Declaratory Relief ("the Declaratory Action"). The Answer and Counterclaim are attached as "Exhibit B". The Declaratory Relief action seeks the determination of several issues, including, but not limited to, the following:

- A. That Applicant's use of the words "Que Huong" in connection with the sale of general, non-refrigerated (vacuum-packed), shelf food products based on registered trademarks QUE HUONG, Registration No. 2099092 and OLDMAN QUE HUONG brand, Registration No. 2311982 (both of which are incontestable), does not infringe any valid rights Opposer may have in or to the words "Que Huong";
- B. That Applicant's use of the words "Que Huong" in connection with either of its registered trademarks, does not constitute unfair competition;
- C. That Applicant's rights in and to the words "Que Huong" are superior to the rights, if any, of Opposer, at least with respect to certain goods and channels of trade;
- D. That Opposer's objections to Applicant's use of the words "Que Huong" in connection with the sale of general, non-refrigerated

(vacuum-packed), shelf food products are barred by the doctrine of laches, waiver and estoppel; and

- E. That Opposer's objections to the words "Que Huong" are barred because Opposer has acquiesced in Applicant's use of those words in connection with the sale of general, non-refrigerated (vacuum-packed), shelf food products for a period of more than fifteen (15) years.

3. Suspension requests are routinely granted if the final determination of another proceeding will have a bearing on the issues before the Board. *See e.g. General Motors Corp. v. Cadillac Club Fashions*, 22 USPQ2d 1933 (TTAB 1992); *Toro Co. v. Hardigg Industries, Inc.*, 187 USPQ 689 (TTAB 1975), *rev'd on other grounds*, 549 F.2d 785, 193 USPQ 149 (CCPA 1977).

4. The Civil and Declaratory Action was filed because a justiciable controversy exists between the parties. In addition to the Opposition, which states a prima facie case for trademark infringement as outlined in 15 U.S.C. 1114(1), Opposer has filed suit against Applicant for trademark infringement, despite the fact that Applicant's use of the words "Que Huong" is pursuant to registered trademarks issued by the USPTO to Applicant for QUE HUONG, Registration No. 2099092 and OLDMAN QUE HUONG brand, Registration No. 2311982; both marks are incontestable; and Applicant's use of both marks is for general, non-refrigerated (vacuum-packed), shelf food products, whereas Opposer's use of its own mark is for refrigerated meat products. Applicant's current trademark application 78/538163 is consistent with its prior uses for

general, non-refrigerated (vacuum-packed), shelf food products. These acts give rise to Applicant's real and reasonable apprehension that Opposer intends to prevent Applicant from using its QUE HUONG mark in the U.S. and worldwide.

5. Suspension of this proceeding would promote judicial economy. The Civil Action involves claims which cannot be raised before the Board, including a claim that Applicant's use of the "Que Huong" mark does not infringe Opposer's alleged mark. Thus, a continuation of this proceeding would only delay, without compensating benefits, the inevitable—a final disposition of this matter before a court.

6. Moreover, the decision of the district court is binding upon the Board, while the decision of the Board is not binding upon the district court. *Sonora Cosmetics, Inc. v. L'Oreal S.A.*, 631 F. Supp. 626, 629 (SD NY 1986) (It is preferable for the TTAB to stay its own proceedings where parallel litigation occurs in the district court.) *citing The Other Telephone Co. v. Connecticut National Telephone Co.*, 181 USPQ 779, 782 (Com'r 1974), *aff'd*, 795 F.2d 1005 (2<sup>nd</sup> Cir. 1986); *Continental Connector Corp. v. Continental Specialties Corp.*, 413 F.Supp. 1347 (D. Conn 1976) ("The proceedings and determinations of the PTO are of limited importance in a federal court proceeding...when registration decisions are litigated in a district...the proceeding is virtually de novo...").

7. Finally, because the opposition proceeding is in its early stages, neither party has engaged in discovery at this time, a stay would not prejudice or unduly burden either party.

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Based on the foregoing and because further trial court action is inevitable in this case, Applicant respectfully requests that Opposition No. 91167057 be suspended pending the Civil and Declaratory Action in the United States District Court, for the Central District of California, Case No. CV 05-3635 GPS (JTLx).

Dated: November 30, 2005

Respectfully submitted,

By: 

ERNEST E. PRICE (SBN 163391)  
TRUC M. LUU (SBN 227576)  
ROPERS, MAJESKI, KOHN & BENTLEY  
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Email: tluu@ropers.com  
Attorneys for Applicant

### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

  
\_\_\_\_\_  
Truc M. Luu

\_\_\_\_\_  
TRUC LUU  
(Signature)

\_\_\_\_\_  
November 30, 2005  
(Date)

# SUMMONS (CITACION JUDICIAL)

SUM-100

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

KIM SENG COMPANY, a California corporation; and  
DOES 1 through 10, inclusive

## YOU ARE BEING SUED BY PLAINTIFF:

### (LO ESTA DEMANDANDO EL DEMANDANTE):

DEREK & CONSTANCE LEE CORPORATION dba GREAT  
RIVER FOOD, a California corporation

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de solicitud de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referición a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of the State of California, County of Los Angeles  
111 N. Hill Street  
Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Law Offices of Gary Freedman - Gary Freedman (SBN 49922)  
Browne & Woods LLP - Peter W. Ross (SBN 109741)

450 N. Broadway, 7th Fl., Beverly Hills, CA 90210; T: (310) 274-7100

DATE: APR 13 2005 John A. Swain, Clerk, by

(Fecha) (Secretario) D.M. SWAIN, Deputy

(For proof of service of this summons. Use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): *Kim Seng Company, a California corporation*  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)  
☐ other (specify):
- ☒ by personal delivery on (date): *4/13/05*

SUMMONS

Page 1 of 1

Code of Civil Procedure §§ 412.20, 485

**ORIGINAL FILED**

APR 13 2005

**LOS ANGELES  
SUPERIOR COURT**

1 LAW OFFICES OF GARY FREEDMAN  
 2 Gary Freedman (State Bar No. 49922)  
 3 1149 Third Street, Suite 200  
 4 Santa Monica, California 90403  
 5 Telephone: (310) 576-2444 Fax: (310) 576-2440

6 BROWNE & WOODS LLP  
 7 Peter W. Ross (State Bar No. 109741)  
 8 N. Kamba Extavour (State Bar No. 188513)  
 9 450 North Roxbury Drive, Seventh Floor  
 10 Beverly Hills, California 90210-4231  
 11 Telephone: (310) 274-7100 Fax: (310) 275-5697

12 Attorneys for Plaintiff Derek & Constance Lee  
 13 Corporation dba Great River Food

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 IN AND FOR THE COUNTY OF LOS ANGELES

13 DEREK & CONSTANCE LEE  
 14 CORPORATION dba GREAT RIVER FOOD,  
 15 a California corporation,

16 Plaintiff,

17 v.

18 KIM SENG COMPANY, a California  
 19 corporation; and DOES 1 through 10,  
 20 inclusive,

21 Defendants.

Case No.

BC331792

COMPLAINT FOR:

- (1) TRADEMARK INFRINGEMENT  
 [15 U.S.C. § 1114(1);  
 Cal. Bus. & Prof. Code  
 § 14320(a)(1)];
- (2) TRADEMARK DILUTION [15  
 U.S.C. § 1125(c); Cal. Bus. &  
 Prof. Code § 14330];
- (3) FALSE DESIGNATION OF  
 ORIGIN [15 U.S.C. 1125(a)]; and
- (4) UNFAIR COMPETITION  
 [Cal. Bus. & Prof. Code  
 §§ 17200 et seq. and common  
 law]

-1-

COMPLAINT FOR TRADEMARK INFRINGEMENT, TRADEMARK DILUTION,  
 FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION

130633

1 Plaintiff Derek & Constance Lee Corporation dba Great River Food, as and for its  
2 complaint against Defendant Kim Seng Company and Does 1 through 10, alleges as  
3 follows:  
4

5 **THE PARTIES**

6 1. Plaintiff Derek & Constance Lee Corporation dba Great River Food ("Plaintiff"  
7 or "Great River Food") is a corporation organized and existing under the laws of the State of  
8 California, with its principal place of business in this judicial district.

9 2. Plaintiff is informed and believes, and thereon alleges, that Defendant Kim  
10 Seng Company ("Kim Seng") is a corporation organized and existing under the laws of the  
11 State of California. Plaintiff is further informed and believes, and thereon alleges, that Kim  
12 Seng is qualified to do business, and is doing business, in this judicial district.

13 3. Plaintiff is unaware of the true names and capacities of defendants named  
14 herein as Does 1 through 10, inclusive, but is informed and believes, and thereon alleges,  
15 that each of the fictitiously named defendants engaged in, or is in some manner responsible  
16 for, the wrongful conduct alleged herein. Plaintiff therefore sues these defendants by such  
17 fictitious names and will amend this complaint to state their true names and capacities  
18 when such names have been discovered.

19 4. Plaintiff is informed and believes that in doing the acts alleged herein, each of  
20 the defendants was the agent, principal, employee, representative, or alter ego of the other  
21 defendants and/or acted with one or more of the other defendants' knowledge, consent,  
22 and approval, and acted within the course and scope of his agency or representative  
23 capacity. As such, each of the defendants is responsible for the actions of the other  
24 defendants, as alleged herein.

25 **REC'D**  
26 **APR 26 2005**  
27 **SCRO**  
28

**PLEASE REFAX**  
**DID NOT RECEIVE**  
**ENTIRE DOCUMENT**  
*Rec'd only 14 to 25*

-2-

COMPLAINT FOR TRADEMARK INFRINGEMENT, TRADEMARK DILUTION,  
FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION

135633

APR 28 2005 08:31 FR GOLDEN EAGLE INS  
P.06/17

4405641051 TO 6506 744 619

APR 28 2005 08:31 FR GOLDEN EAGLE INS



From: Access Insurance Services, Inc. To: Commercial Claims Dept.

Date: 4/21/2005 Time: 12:23:48 PM

Page 16 of 26

**GENERAL ALLEGATIONS**

5. Since June 1, 1986, Plaintiff has continuously been in the business of manufacturing and distributing Asian food products under the trademark QUE HUONG, a foreign phrase meaning "hometown". Plaintiff registered QUE HUONG as Plaintiff's trademark in the United States Patent and Trademark Office on March 18, 1997, under Registration No. 2046157, in International Class 29 and United States Class 46 for the following products: meat, sausage, pate, ham, and pork skin. (Plaintiff obtained ownership of the trademark registration by written assignment from Plaintiff's predecessor, Great River Food Corporation.) Plaintiff continues to own the registration, which is, and continues to be, in full force and effect. A copy of Plaintiff's trademark registration is appended hereto as Exhibit "A" and incorporated herein by this reference. Plaintiff has never licensed the trademark to Defendants, or any of them. Nor has Plaintiff agreed that any Defendant can use QUE HUONG or any confusingly similar mark.

6. Plaintiff has advertised and sold Asian food products bearing the QUE HUONG trademark throughout the United States since June 1986. As a result, since 1986, consumers have come to accept and recognize QUE HUONG as a trademark identifying Plaintiff's products. Further, as a result of Plaintiff's sales and advertising, the QUE HUONG mark has become and remains famous since the late 1980s. Plaintiff's trademark has thus become, and is, a valuable asset of Plaintiff symbolizing Plaintiff, its quality goods, and its goodwill.

7. Defendant Kim Seng is a trading company that, among other things, buys and sells food products. Defendant Kim Seng is a former distributor of Plaintiff's products. In particular, Defendant purchased and resold to consumers Plaintiff's QUE HUONG food products in the mid-1980s until the early 1990s.

8. Plaintiff is informed and believes and thereon alleges that in the late 1980s or early 1990s Defendants recognized the consumer awareness and goodwill associated with Plaintiff's QUE HUONG trademark, and Defendants conspired to usurp that goodwill for

1 themselves by selling, without the permission or knowledge of Plaintiff, Asian food products  
2 under the trade name QUE HUONG and OLD MAN QUE HUONG BRAND (collectively  
3 "Defendants' Marks"). Acting pursuant to this conspiracy, in or about March 1993, Kim  
4 Seng commenced marketing in interstate commerce its own line of Asian food products  
5 under Defendants' Marks.

6 9. Plaintiff is informed and believes and thereon alleges that, as a result of  
7 Defendants' use of Defendants' Marks, consumers are likely to be, and in fact have been  
8 confused, as to the source of Defendants' goods, and have bought those goods on the  
9 assumption that they were manufactured or distributed by Plaintiff.

10 10. On or about January 18, 2005, Plaintiff, by letter, advised Defendant Kim  
11 Seng of Plaintiff's ownership of the trademark QUE HUONG and the registration therefor  
12 which established that Plaintiff first used that mark in commerce in September 1986, years  
13 before Defendants used its marks. Plaintiff further requested that Defendant immediately  
14 cease and desist from further use of the name QUE HUONG. Defendant Kim Seng has  
15 failed and refused, and continues to fail and refuse, to comply with Plaintiff's request.

16 11. Plaintiff is informed and believes and thereon alleges that each of the  
17 Defendants has received a direct financial benefit from the infringement of Plaintiff's  
18 trademark in an amount that is unknown to Plaintiff.

19 12. Plaintiff is informed and believes and thereon alleges that Defendants' Asian  
20 food products are inferior in quality to Plaintiff's Asian food products, and consumers who  
21 have purchased Defendants' products, believing them to be Plaintiff's, have been  
22 disappointed by the quality of those products. As a result, Defendants' sale and distribution  
23 of products under Defendants' Marks have damaged and will continue to damage Plaintiff's  
24 reputation.

25 13. Plaintiff is informed and believes and thereon alleges that Defendants' sale  
26 and distribution of Asian food products under Defendants' Marks brand have also damaged  
27 Plaintiff in that Plaintiff has lost sales and profits.

28

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-4-

COMPLAINT FOR TRADEMARK INFRINGEMENT, TRADEMARK DILUTION,  
FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION

FROM: ACCORD INSURANCE SERVICES, Inc. To: Commercial Claims Dept.

Date: 4/21/2005 Time: 12:23:46 PM

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14. Defendants' acts have caused and will continue to cause irreparable harm and injury to Plaintiff for which Plaintiff has no adequate remedy at law. Accordingly, Defendants should be enjoined and restrained during the pendency of this action and permanently thereafter, from directly or indirectly manufacturing, distributing, importing, exporting, advertising, offering for sale or selling any products bearing the words QUE HUONG as part or all of its mark. Pursuant to 15 U.S.C. § 1116, Plaintiff is therefore entitled to a preliminary and permanent injunction against Defendants' continuing acts of infringement. Plaintiff is further entitled to an order impounding and destroying all infringing products in Defendants' possession, custody or control.

#### FIRST CLAIM FOR RELIEF

(Against all Defendants for Trademark Infringement, 15 U.S.C. § 1114(1))

15. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above in paragraphs 1 through 14, inclusive.

16. Plaintiff is informed and believes, and thereon alleges, that, in or around the late 1980s or early 1990s, Defendants began to sell and offer for sale Asian food products under Defendants' Marks.

17. Defendants are not now, and never have been, authorized by Plaintiff to use Plaintiff's trademark QUE HUONG or any confusingly similar mark in connection with the marketing and/or sale of Defendants' goods.

18. Defendants' use of the words QUE HUONG is likely to cause confusion, mistake, and/or deception among consumers as to the source, quality, and nature of Defendants' goods.

19. Plaintiff is informed and believes and thereon alleges, that, as a proximate result of the unfair advantage accruing to Defendants' business from deceptively trading on Plaintiff's advertising, sales, and consumer recognition, Defendants have made substantial sales and profits in amounts to be established according to proof.

20. As a proximate result of the unfair advantage accruing to Defendants' business from deceptively trading on Plaintiff's advertising, sales, and consumer recognition, Plaintiff has been damaged and deprived of substantial sales of its food products and has been deprived of the value of its trademark as a commercial asset, in amounts to be established according to proof.

21. Plaintiff is informed and believes, and thereon alleges that, unless restrained by the Court, Defendants will continue to infringe Plaintiff's trademark, thus engendering a multiplicity of judicial proceedings, and that pecuniary compensation will not afford Plaintiff adequate relief for the damage to its trademark in the public perception. Further, Plaintiff is informed and believes, and thereon alleges, that in the absence of injunctive relief, customers are likely to continue being mistaken or deceived as to the true source, origin, sponsorship, and affiliation of Defendants' goods.

22. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts were committed, and continue to be committed, with actual notice of Plaintiff's exclusive rights and with an intent to cause injury to the reputation and goodwill associated with Plaintiff and its products. Pursuant to 15 U.S.C. § 1117(b), Plaintiff is, therefore, entitled to recover three times its actual damages or three times Defendants' profits, whichever is greater, together with Plaintiff's attorneys' fees. In addition, pursuant to 15 U.S.C. § 1118, Plaintiff is entitled to an order requiring destruction of all infringing products and promotional materials in Defendants' possession.

## SECOND CLAIM FOR RELIEF

**(Against all Defendants for Trademark Dilution, 15 U.S.C. § 1125(c)**

23. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above in paragraphs 1 through 22, inclusive,

24. Prior to Defendants' use of the mark QUE HUONG, that mark had become distinctive and famous.

20. As a proximate result of the unfair advantage accruing to Defendants' business from deceptively trading on Plaintiff's advertising, sales, and consumer recognition, Plaintiff has been damaged and deprived of substantial sales of its food products and has been deprived of the value of its trademark as a commercial asset, in amounts to be established according to proof.

21. Plaintiff is informed and believes, and thereon alleges that, unless restrained by the Court, Defendants will continue to infringe Plaintiff's trademark, thus engendering a multiplicity of judicial proceedings, and that pecuniary compensation will not afford Plaintiff adequate relief for the damage to its trademark in the public perception. Further, Plaintiff is informed and believes, and thereon alleges, that in the absence of injunctive relief, customers are likely to continue being mistaken or deceived as to the true source, origin, sponsorship, and affiliation of Defendants' goods.

22. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts were committed, and continue to be committed, with actual notice of Plaintiff's exclusive rights and with an intent to cause injury to the reputation and goodwill associated with Plaintiff and its products. Pursuant to 15 U.S.C. § 1117(b), Plaintiff is, therefore, entitled to recover three times its actual damages or three times Defendants' profits, whichever is greater, together with Plaintiff's attorneys' fees. In addition, pursuant to 15 U.S.C. § 1118, Plaintiff is entitled to an order requiring destruction of all infringing products and promotional materials in Defendants' possession.

## SECOND CLAIM FOR RELIEF

**(Against all Defendants for Trademark Dilution, 15 U.S.C. § 1125(c)**

24 23. Plaintiff realleges and incorporates herein by reference each and every  
25 allegation set forth above in paragraphs 1 through 22, inclusive.

26 24. Prior to Defendants' use of the mark QUE HUONG, that mark had become  
27 distinctive and famous.

28

1 25. Defendants' acts have lessened the capacity of Plaintiff's famous QUE  
2 HUONG mark to identify and distinguish Plaintiff's goods. Defendants' acts have blurred  
3 the unique association which has heretofore existed between Plaintiff's QUE HUONG mark  
4 and goods manufactured by Plaintiff.

5 26. By reason of Defendants' acts, Plaintiff has suffered, and will suffer, damage  
6 to its business, reputation, and goodwill, and the loss of sales and profits in an amount to  
7 be established according to proof.

8 27. Plaintiff is without an adequate remedy at law in that the continuing nature of  
9 Defendants' acts of infringement and dilution will cause severe and irreparable injury that  
10 cannot be adequately measured or compensated by damages. Pursuant to 15 U.S.C. §  
11 1116, Plaintiff is, therefore, entitled to a preliminary and permanent injunction enjoining  
12 Defendants' continuing acts of infringement and dilution.

13 28. Plaintiff is informed and believes, and thereon alleges, that in engaging in the  
14 above described conduct, Defendants willfully intended to trade on Plaintiff's reputation  
15 and/or to cause dilution of Plaintiff's trademark QUE HUONG. Pursuant to 15 U.S.C.  
16 § 1117(b), Plaintiff is entitled to recover three times its actual damages or three times  
17 Defendants' profits, whichever is greater, together with Plaintiff's attorneys' fees. In  
18 addition, pursuant to 15 U.S.C. § 1118, Plaintiff is entitled to an order requiring destruction  
19 of all infringing products and promotional materials in Defendants' possession.  
20

21 **THIRD CLAIM FOR RELIEF**

22 (Against all Defendants for False Designation of Origin, 15 U.S.C. § 1125(a))

23 29. Plaintiff realleges and incorporates herein by reference each and every  
24 allegation set forth above in paragraphs 1 through 28, inclusive.

25 30. Defendants have caused goods to enter into interstate commerce under  
26 Defendants' Marks. Said uses of QUE HUONG are false designations of origin which are  
27 likely to cause confusion and mistake and to deceive consumers as to the affiliation,  
28

1 connection, or association of Defendants with Plaintiff and as to the origin, sponsorship, or  
2 approval of such goods by Plaintiff.

3 31. Plaintiff is informed and believes and thereon alleges that as a proximate  
4 result of Defendants' false designation of the origin of their goods, Plaintiff has been  
5 damaged and Defendants have earned profits in amounts that will be established at the trial  
6 of this action.

7 32. Plaintiff is informed and believes and thereon alleges that unless restrained by  
8 this Court, Defendants will continue to designate falsely the origin of their goods, causing  
9 irreparable damage to Plaintiff and engendering a multiplicity of lawsuits. Further,  
10 pecuniary compensation will not afford Plaintiff adequate relief for its resulting damages.  
11

12 **FOURTH CLAIM FOR RELIEF**

13 **(Against All Defendants For Trademark Infringement and**  
14 **Dilution Under California Law)**

15 33. Plaintiff realleges and incorporates herein by reference each and every  
16 allegation set forth above in paragraphs 1 through 32, inclusive.

17 34. Defendants' conduct, as alleged hereinabove, violates sections 14320 and  
18 14330 of the *California Business and Professions Code*. Plaintiff is informed and believes,  
19 and thereon alleges, that Defendants engaged in the above described acts with the intent of  
20 causing confusion or mistake. Plaintiff is, therefore, entitled to recover Defendants' profits  
21 and Plaintiff's damages, according to proof.

22 35. Plaintiff is without an adequate remedy at law in that the continuing nature of  
23 Defendants' acts of infringement and dilution will cause severe and irreparable injury which  
24 cannot be completely or adequately measured or compensated by damages. Plaintiff is,  
25 therefore, entitled to preliminary and permanent injunctions enjoining Defendants'  
26 continuing acts of infringement and dilution.  
27  
28

**FIFTH CLAIM FOR RELIEF**

(Against all Defendants for Statutory and Common Law Unfair Competition)

36. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above in paragraphs 1 through 35, inclusive.

37. Defendants' conduct as alleged hereinabove, constitutes unfair, unlawful, and fraudulent business practices prohibited by §§ 17200 *et seq.* and §§ 17500 *et seq.* of the *California Business & Professions Code*.

38. Plaintiff has no adequate remedy at law for the injury that will be caused by Defendants' acts of unfair competition and/or fraudulent business practices. Accordingly, Plaintiff is entitled to preliminary and permanent injunctions restraining Defendants, their officers, agents, and employees, and all persons acting in concert with them, from further engaging in acts of unfair competition and/or fraudulent business acts against Plaintiff and its products.

39. Defendants' conduct, as alleged hereinabove, also constitutes acts of unfair competition under California common law. These acts have caused Plaintiff to lose profits and additional damage to Plaintiff's reputation and goodwill. The precise amount of Plaintiff's damages is presently unknown but will be established according to proof.

40. Plaintiff is informed and believes and thereon alleges that as a direct and proximate result of Defendants' wrongful conduct as described above, Defendants have gained property and revenues properly belonging to Plaintiff.

41. Plaintiff is informed and believes, and thereon alleges, that Defendants committed the foregoing acts with the intention of depriving Plaintiff of its legal rights, with oppression, fraud, and/or malice, and in conscious disregard of Plaintiff's rights. Plaintiff is, therefore, entitled to an award of exemplary damages, according to proof.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

3 1. For preliminary and permanent injunctions enjoining and restraining  
4 Defendants, their agents, employees, representatives, partners, joint venturers and/or  
5 anyone acting on behalf of, or in concert with, Defendants, or any of them, from:

6 A. importing, shipping, delivering, selling, marketing, displaying,  
7 advertising, or promoting any goods that bear the trademark QUE HUONG or OLD MAN  
8 QUE HUONG BRAND or any other mark so similar to Plaintiff's trademark QUE HUONG as  
9 to create a likelihood of confusion, mistake, or deception; and/or

10 B. representing or implying, directly or indirectly, to retailers, customers,  
11 distributors, licensees, or any other customers or potential customers for Defendants'  
12 products that they originate with, are sponsored, endorsed, or licensed by, or are otherwise  
13 associated or affiliated with Plaintiff;

14 2. For an order requiring the destruction of all Defendants' infringing goods and  
15 all marketing, advertising, or promotional materials depicting Defendants' infringing goods;

16 3. For an accounting of all profits obtained by Defendants from sales of the  
17 infringing goods and an order that Defendants hold all such profits in constructive trust for  
18 the benefit of Plaintiff;

19 4. For an award to Plaintiff of all profits earned by Defendants from the sale of  
20 infringing goods;

21 5. For restitution to Plaintiff of all property and revenues obtained by Defendants  
22 through their acts of unfair competition;

23 6. For statutory damages according to proof;

24 7. For compensatory damages according to proof;

25 8. For exemplary and multiple damages according to proof;

26 9. For an award of attorneys' fees;

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- 1 10. For costs of suit incurred herein; and
- 2 11. For such other and further relief as the Court deems just and proper.
- 3
- 4

5 Dated: April 13, 2005

LAW OFFICES OF GARY FREEDMAN

BROWNE & WOODS LLP

Peter W. Ross

N. Kemba Extavour

By



Peter W. Ross

Attorneys for Plaintiff Derek & Constance Lee  
Corporation dba Great River Food

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-11-  
COMPLAINT FOR TRADEMARK INFRINGEMENT, TRADEMARK DILUTION,  
FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION

\*\* TOTAL PAGE 17 \*\*

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MAR 13 2005 12:41 PM

GREAT RIVER FOOD

NO. 463 P. 2

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,046,457

Registered Mar. 12, 1997

TRADEMARK  
PRINCIPAL REGISTER

QUÊ HƯƠNG

GREAT RIVER FOOD CORPORATION (CALL  
FORMER CORPORATION, DRA GREAT  
WALL FOOD CORPORATION  
1845 EAST SAN JOSE AVENUE  
CITY OF INDUSTRY, CA 91706FIRST USE 6-1-1994 IN COMMERCE  
9-1-1996  
THE ENGLISH TRANSLATION OF "QUÊ  
HƯƠNG" IS "HOMETOWN".FOR MEAT, SAUSAGE, BATE, PAM, AND  
PORK SKIN, IN CLASS 29 (U.S. CL. 46).SER. NO. 75-12,118, FILED 6-15-1996  
ZHALEH DELANEY, EXAMINING ATTOR-  
NEY

EXHIBIT A

1 ERNEST E. PRICE (SBN 163391)  
2 TRUC M. LUU (SBN 227576)  
3 ROPERS, MAJESKI, KOHN & BENTLEY  
4 515 South Flower Street, Suite 1100  
5 Los Angeles, CA 90071  
6 Telephone: (213) 312-2000  
7 Facsimile: (213) 312-2001  
8 Email: eprice@ropers.com  
9 Email: tluu@ropers.com

10 Attorneys for Defendant  
11 KIM SENG COMPANY, A CALIFORNIA  
12 CORPORATION; AND DOES 1  
13 THROUGH 10, INCLUSIVE

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 DEREK & CONSTANCE LEE  
17 CORPORATION dba GREAT  
18 RIVER FOOD, a California  
19 corporation,

20 Plaintiff,

21 v.

22 KIM SENG COMPANY, a  
23 California corporation; and DOES 1  
24 through 10, inclusive,

25 Defendant.

26 CASE NO. CV 05-3535 GPS (JTLx)

27 ANSWER TO COMPLAINT AND  
28 COUNTER CLAIM

Honorable George P. Schiavilli

29 Defendant KIM SENG COMPANY ("KIM SENG"), by and through its  
30 counsel of record, hereby submits its Answer and Affirmative Defenses to the  
31 Complaint by DEREK & CONSTANCE LEE CORPORATION dba GREAT  
32 RIVER FOOD ("Plaintiff") and counter-claims, as follows:

33 **PARTIES**

34 1. KIM SENG is without knowledge or information sufficient to form a  
35 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
36 allegations contained therein.

1           2.     Admitted.

2           3.     KIM SENG is without knowledge or information sufficient to form a  
3 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
4 allegations and implications of liability contained therein.

5           4.     KIM SENG is without knowledge or information sufficient to form a  
6 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
7 allegations and implications of liability contained therein.

8                               **ANSWER TO GENERAL ALLEGATIONS**

9           5.     KIM SENG admits that Plaintiff manufactures and distributes Asian  
10 food products under the trademark QUE HUONG, a foreign phrase meaning,  
11 among other things, "hometown". KIM SENG admits that the mark QUE HUONG  
12 has a registration date of March 18, 1997 under Registration No. 2046157, in  
13 International Class 29 and United States Class 48 for the following products: meat,  
14 sausage, pate, ham, and pork skin. Exhibit "A" of the Complaint is a document that  
15 speaks for itself, and characterizations of that document are denied. KIM SENG is  
16 without knowledge or information sufficient to form a belief as to the truth of the  
17 other allegations of this paragraph, and on that basis they are denied.

18           6.     KIM SENG is without knowledge or information sufficient to form a  
19 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
20 allegations and implications of liability contained therein.

21           7.     KIM SENG admits that it buys and sells food products. KIM SENG is  
22 without knowledge or information sufficient to form a belief as to the truth of the  
23 other allegations of this paragraph, and on that basis they are denied.

24           8.     The allegations of this paragraph insofar as they concern KIM SENG  
25 are denied. KIM SENG avers that is permitted to sell its' products under the  
26 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
27 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
28 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or

1 information sufficient to form a belief as to the truth of the allegations of this  
2 paragraph insofar as they concern other defendants, and on that basis denies the  
3 allegations and implications of liability contained therein.

4 9. KIM SENG is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
6 allegations and implications of liability contained therein.

7 10. KIM SENG admits it received a letter on or about January 18, 2005  
8 from Plaintiffs. KIM SENG denies that this letter requested KIM SENG  
9 immediately cease and desist from further use of the mark QUE HUONG. KIM  
10 SENG is without knowledge or information sufficient to form a belief as to the  
11 truth of the other allegations of this paragraph, and on that basis they are denied.

12 11. The allegations of this paragraph insofar as they concern KIM SENG  
13 are denied. KIM SENG is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations of this paragraph insofar as they concern  
15 other defendants, and on that basis denies the allegations and implications of  
16 liability contained therein.

17 12. KIM SENG denies that its food products are inferior in quality to  
18 Plaintiffs' Asian food products. KIM SENG is without knowledge or information  
19 sufficient to form a belief as to the truth of the other allegations of this paragraph,  
20 and on that basis they are denied.

21 13. KIM SENG is without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
23 allegations and implications of liability contained therein.

24 14. The allegations of this paragraph are conclusions of law which require  
25 no response. To the extent facts are alleged, they are denied insofar as they concern  
26 KIM SENG. KIM SENG avers that is permitted to sell its' products under the  
27 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
28 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as

1 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations of this  
3 paragraph insofar as they concern other defendants, and on that basis denies the  
4 allegations and implications of liability contained therein.

5 **FIRST CLAIM FOR RELIEF**

6 **(Based on Purported Federal Trademark Infringement)**

7 15. In answering paragraph 15 of the Complaint, KIM SENG incorporates  
8 by reference the responses contained herein.

9 16. Admitted.

10 17. To the extent facts are alleged, they are denied insofar as they concern  
11 KIM SENG. KIM SENG avers that is permitted to sell its products under the  
12 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
13 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
14 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
15 information sufficient to form a belief as to the truth of the allegations of this  
16 paragraph insofar as they concern other defendants, and on that basis denies the  
17 allegations and implications of liability contained therein.

18 18. KIM SENG is without knowledge or information sufficient to form a  
19 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
20 allegations and implications of liability contained therein.

21 19. The allegations of this paragraph insofar as they concern KIM SENG  
22 are denied. KIM SENG is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations of this paragraph insofar as they concern  
24 other defendants, and on that basis denies the allegations and implications of  
25 liability contained therein.

26 20. The allegations of this paragraph insofar as they concern KIM SENG  
27 are denied. KIM SENG is without knowledge or information sufficient to form a  
28 belief as to the truth of the allegations of this paragraph insofar as they concern

1 other defendants, and on that basis denies the allegations and implications of  
2 liability contained therein.

3 21. The allegations of this paragraph are conclusions of law which require  
4 no response. To the extent facts are alleged, they are denied insofar as they concern  
5 KIM SENG. KIM SENG avers that is permitted to sell its' products under the  
6 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
7 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
8 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations of this  
10 paragraph insofar as they concern other defendants, and on that basis denies the  
11 allegations and implications of liability contained therein.

12 22. The allegations of this paragraph are conclusions of law which require  
13 no response. To the extent facts are alleged, they are denied insofar as they concern  
14 KIM SENG. KIM SENG avers that is permitted to sell its' products under the  
15 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
16 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
17 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
18 information sufficient to form a belief as to the truth of the allegations of this  
19 paragraph insofar as they concern other defendants, and on that basis denies the  
20 allegations and implications of liability contained therein.

21 **SECOND CLAIM FOR RELIEF**

22 **(Based on Purported Trademark Dilution)**

23 23. In answering paragraph 23 of the Complaint, KIM SENG incorporates  
24 by reference the responses contained herein.

25 24. KIM SENG is without knowledge or information sufficient to form a  
26 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
27 allegations and implications of liability contained therein.

28 25. KIM SENG is without knowledge or information sufficient to form a



1 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
2 allegations and implications of liability contained therein.

3 26. KIM SENG is without knowledge or information sufficient to form a  
4 belief as to the truth of the allegations of this paragraph, and on that basis denies the  
5 allegations and implications of liability contained therein.

6 27. The allegations of this paragraph are conclusions of law which require  
7 no response. To the extent facts are alleged, they are denied insofar as they concern  
8 KIM SENG. KIM SENG avers that is permitted to sell its' products under the  
9 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
10 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
11 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations of this  
13 paragraph insofar as they concern other defendants, and on that basis denies the  
14 allegations and implications of liability contained therein.

15 28. The allegations of this paragraph are conclusions of law which require  
16 no response. To the extent facts are alleged, they are denied insofar as they concern  
17 KIM SENG. KIM SENG avers that is permitted to sell its' products under the  
18 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
19 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
20 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
21 information sufficient to form a belief as to the truth of the allegations of this  
22 paragraph insofar as they concern other defendants, and on that basis denies the  
23 allegations and implications of liability contained therein.

24 **THIRD CLAIM FOR RELIEF**

25 **(Based on Purported False Designation of Origin)**

26 29. In answering paragraph 29 of the Complaint, KIM SENG incorporates  
27 by reference the responses contained herein.

28 30. The allegations of this paragraph insofar as they concern KIM SENG

1 are denied. KIM SENG is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations of this paragraph insofar as they concern  
3 other defendants, and on that basis denies the allegations and implications of  
4 liability contained therein.

5 31. The allegations of this paragraph insofar as they concern KIM SENG  
6 are denied. KIM SENG is without knowledge or information sufficient to form a  
7 belief as to the truth of the allegations of this paragraph insofar as they concern  
8 other defendants, and on that basis denies the allegations and implications of  
9 liability contained therein.

10 32. The allegations of this paragraph insofar as they concern KIM SENG  
11 are denied. KIM SENG is without knowledge or information sufficient to form a  
12 belief as to the truth of the allegations of this paragraph insofar as they concern  
13 other defendants, and on that basis denies the allegations and implications of  
14 liability contained therein.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Based on Purported Trademark Infringement and**  
17 **Dilution Under California Law)**

18 33. In answering paragraph 33 of the Complaint, KIM SENG incorporates  
19 by reference the responses contained herein.

20 34. The allegations of this paragraph insofar as they concern KIM SENG  
21 are denied. KIM SENG is without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations of this paragraph insofar as they concern  
23 other defendants, and on that basis denies the allegations and implications of  
24 liability contained therein.

25 35. The allegations of this paragraph are conclusions of law which require  
26 no response. To the extent facts are alleged, they are denied insofar as they concern  
27 KIM SENG. KIM SENG avers that is permitted to sell its' products under the  
28 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit

1 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
2 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
3 information sufficient to form a belief as to the truth of the allegations of this  
4 paragraph insofar as they concern other defendants, and on that basis denies the  
5 allegations and implications of liability contained therein.

6 **FIFTH CLAIM FOR RELIEF**

7 **(Based on Purported Statutory and Common Law Unfair Competition)**

8 36. In answering paragraph 36 of the Complaint, KIM SENG incorporates  
9 by reference the responses contained herein.

10 37. The allegations of this paragraph are conclusions of law which require  
11 no response. To the extent facts are alleged, they are denied insofar as they concern  
12 KIM SENG. KIM SENG avers that is permitted to sell its' products under the  
13 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
14 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
15 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
16 information sufficient to form a belief as to the truth of the allegations of this  
17 paragraph insofar as they concern other defendants, and on that basis denies the  
18 allegations and implications of liability contained therein.

19 38. The allegations of this paragraph are conclusions of law which require  
20 no response. To the extent facts are alleged, they are denied insofar as they concern  
21 KIM SENG. KIM SENG avers that is permitted to sell its' products under the  
22 registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit  
23 "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as  
24 Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or  
25 information sufficient to form a belief as to the truth of the allegations of this  
26 paragraph insofar as they concern other defendants, and on that basis denies the  
27 allegations and implications of liability contained therein.

28 39. The allegations of this paragraph are conclusions of law which require

no response. To the extent facts are alleged, they are denied insofar as they concern KIM SENG. KIM SENG avers that is permitted to sell its' products under the registered marks QUE HUONG, Registration No. 2099092 (Attached as Exhibit "A") and OLDMAN QUE HUONG brand, Registration No. 2311982 (Attached as Exhibit "B"), without approval of Plaintiff. KIM SENG is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph insofar as they concern other defendants, and on that basis denies the allegations and implications of liability contained therein.

40. The allegations of this paragraph insofar as they concern KIM SENG are denied. KIM SENG is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph insofar as they concern other defendants, and on that basis denies the allegations and implications of liability contained therein.

41. The allegations of this paragraph insofar as they concern KIM SENG are denied. KIM SENG is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph insofar as they concern other defendants, and on that basis denies the allegations and implications of liability contained therein.

#### **PRAYER FOR RELIEF**

As to the prayer for relief, KIM SENG denies that Plaintiff is entitled to any of the items set forth in the prayer for relief.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

42. Plaintiff's Complaint and each and every purported cause of action contained therein fails to state a claim upon which relief may be granted.

///

///

**SECOND AFFIRMATIVE DEFENSE**

(First Amendment)

43. Plaintiff's Complaint and each and every purported cause of action contained therein is barred by the First Amendment to the United States Constitution.

**THIRD AFFIRMATIVE DEFENSE**

(Unfair Competition)

44. Plaintiff lacks standing to pursue all or some of the relief that it has requested in the instant action because Plaintiff has, before and in furtherance of this litigation, engaged in unfair competition, intimidation, and/or anti-competitive activities calculated to do damage to KIM SENG's business.

**FOURTH AFFIRMATIVE DEFENSE**

(Violation of Procedural Due Process)

45. Plaintiff's Complaint, to the extent that it seeks exemplary or punitive damages pursuant to section 3294 of the Civil Code, violates KIM SENG's right to procedural due process under the Fourteenth Amendment of the United States Constitution, and the Constitution of the State of California, and therefore fails to state a cause of action upon which either punitive or exemplary damages can be awarded.

**FIFTH AFFIRMATIVE DEFENSE**

(Excessive Fines)

46. Plaintiff's Complaint and each and every purported cause of action contained therein fails since the Complaint, to the extent that it seeks punitive or exemplary damages pursuant to section 3294 of the Civil Code, violates KIM SENG's rights to protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Article I, Section 17, of the Constitution of the State of California, and violates KIM SENG's rights to substantive due process as provided in the Fifth and Fourteenth Amendments of the

1 United States Constitution and the Constitution of the State of California, and  
2 therefore fails to state a cause of action supporting the punitive or exemplary  
3 damages claimed.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 (Insufficient Description of Claims)

6 47. KIM SENG is informed and believes, and based upon such  
7 information and belief, alleges that said Complaint, and each purported cause of  
8 action therein fails, since the Complaint does not describe claims against this  
9 answering defendant with sufficient particularity to enable this answering defendant  
10 to determine all of the defenses it currently has. This answering defendant  
11 therefore reserves the right to assert any defenses which may be applicable to said  
12 Complaint once the precise nature of the claims made against this answering  
13 defendant or others are determined.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 (Truth of Statements)

16 48. KIM SENG is informed and believes, and based on such information  
17 and belief, alleges that the Complaint and each of its causes of action are barred and  
18 fail to state a cause of action because the statements or words, if any, allegedly  
19 made by this answering Defendant were/are true.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 (Opinion)

22 49. KIM SENG is informed and believes, and based on such information  
23 and belief, alleges that the Complaint and each of its causes of action are barred and  
24 fail to state a cause of action because the statements or words, if any, allegedly  
25 made by this answering defendant, were statements of opinion , not fact.

26 **NINTH AFFIRMATIVE DEFENSE**

27 (Indemnification and Contribution)

28 50. KIM SENG asserts that if it is established that defendant is in any

1 manner legally responsible for any of the damages claimed by plaintiff in any of the  
2 causes of action in the Complaint, such damages were proximately caused by other  
3 persons or entities not yet parties to this action and over whom defendant has no  
4 control and defendant is entitled to indemnity or contribution from these other  
5 parties.

6 **TENTH AFFIRMATIVE DEFENSE**

7 (Set Off)

8 51. KIM SENG asserts that if it is established that defendant is in any  
9 manner legally responsible for any of the damages claimed by plaintiff in any of the  
10 causes of action in the Complaint, defendant is entitled to a set off of these damages  
11 with the damages that result from the wrongful acts of plaintiff and/or others.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 (Comparative Fault)

14 52. KIM SENG asserts that any loss, injury, or damage alleged in the  
15 Complaint was directly and/or proximately caused and contributed to by the actions  
16 of other persons other than defendant, including, but not limited to, plaintiff and  
17 their agents, employees, and representatives. Therefore, plaintiff's recovery against  
18 defendant, if any, should be reduced in proportion to the percentage of  
19 responsibility attributable to persons other than defendant.

20 **TWELVETH AFFIRMATIVE DEFENSE**

21 (Doctrine of Fair Competition)

22 53. KIM SENG is barred from any relief in this action under and by virtue  
23 of the doctrine of fair competition.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 (Right to Compete)

26 54. KIM SENG is informed and believes, and based upon such  
27 information and belief, alleges that each purported cause of action contained in the  
28 Complaint against this answering defendant is barred because of defendant's

1 privilege and right to compete.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 (Laches)

4 55. KIM SENG is informed and believes, and based upon such  
5 information and belief, alleges that each purported cause of action contained in the  
6 Complaint against this answering defendant is barred by laches.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 (Acquiescence)

9 56. KIM SENG is informed and believes, and based upon such  
10 information and belief, alleges that each purported cause of action contained in the  
11 Complaint against this answering defendant is barred by the doctrine of laches.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 (Unclean Hands)

14 57. KIM SENG is informed and believes, and based upon such  
15 information and belief, alleges that each purported cause of action contained in the  
16 Complaint against this answering defendant is barred by Plaintiff's unclean hands.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 (Statute of Limitations)

19 58. KIM SENG is informed and believes, and based upon such  
20 information and belief, alleges that each purported cause of action contained in the  
21 Complaint against this answering defendant is barred because of the statute of  
22 limitations.

23 **COUNTERCLAIM FOR DECLARATORY JUDGMENT**

24 59. Counter-Claimant KIM SENG asserts the following counterclaim  
25 against Counter-Defendant, GREAT RIVER CORPORATION ("GREAT  
26 RIVER").

27 60. The counterclaim alleged by KIM SENG against GREAT RIVER, is  
28 for declaratory judgment that KIM SENG has not committed Trademark



1 Infringement, Trademark Dilution, False Designation of Origin and common law  
2 Unfair Competition.

3 61. This Court has jurisdiction over the subject matter and personal  
4 jurisdiction over the parties by reason of the Declaratory Judgment Act, 28 U.S.C. §  
5 2201, § 2202 and pursuant to 28 U.S.C. § 1338 and 15 U.S.C. § 1121.

6 62. This counterclaim is compulsory or permissive under the Federal  
7 Rules of Civil Procedure Rule 13.

8 63. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

9 **PARTIES AND GENERAL ALLEGATIONS**

10 64. KIM SENG has been accused by GREAT RIVER in the Complaint  
11 for Trademark Infringement, Trademark Dilution, False Designation of Origin and  
12 common law Unfair Competition.

13 65. GREAT RIVER has created a justiciable controversy with KIM SENG  
14 by its claims, charges and allegations stated in the Complaint.

15 66. KIM SENG is a corporation organized and existing under the laws of  
16 the State of California, having its principal place of business at 1561 Chapin Road,  
17 Montebello, CA 90640.

18 67. KIM SENG is informed and believes that counter-defendant, GREAT  
19 RIVER is a corporation organized and existing under the laws of the State of  
20 California, having its principal place of business in the City of Industry, California  
21 91748.

22 68. KIM SENG manufactures, imports, sells and/or distributes in interstate  
23 commerce its own line of dry foods and canned and bottled goods with a substantial  
24 shelf life, such as rice sticks, rice noodles, fish sauce, and other related products.  
25 KIM SENG owns the rights in certain copyrights, trademarks and trade dress  
26 associated with these goods.

27 69. As early as January 1988, KIM SENG began using the words QUE  
28 HUONG as part of the trademark "OLDMAN QUE HUONG BRAND", together

1 with a logo, for rice sticks (the "OLDMAN QUE HUONG mark"). The words  
2 QUE HUONG are Vietnamese and translate generally to "home country" or "old  
3 country".

4 70. On or about January 25, 2000, the OLDMAN QUE HUONG mark was  
5 registered in the U.S. Patent and Trademark Office ("PTO") as Registration No.  
6 2311982. A true and correct copy of the registration is attached hereto as Exhibit  
7 "A".

8 71. In or about March 1993, KIM SENG began using the words QUE  
9 HUONG alone for rice sticks and fish sauce. On or about September 23, 1997, the  
10 mark QUE HUONG was registered in the PTO as Registration No. 2099092. A  
11 true and correct copy of the registration is attached hereto as Exhibit "B".

12 72. Since 1993, KIM SENG has used, and continues to use, the term QUE  
13 HUONG in interstate commerce in connection with the sale and distribution of a  
14 number of other KIM SENG products, in conjunction with its copyrighted logo  
15 designs, including for example a logo with a boy on a buffalo.

16 73. KIM SENG is informed and believes that GREAT RIVER operates a  
17 meat factory within the Central District of California and that it sells packaged meat  
18 products in easily-perishable, refrigerated form.

19 74. KIM SENG and GREAT RIVER each use the words QUE HUONG in  
20 connection with the sale and distribution of different products which are sold  
21 through different and distinct channels of distribution. In the more than 17 years in  
22 which KIM SENG has used the term QUE HUONG for its dry goods and  
23 nonperishable food products, KIM SENG has never received any information or  
24 claim that any consumer has confused as to the goods of KIM SENG and GREAT  
25 RIVER, as originating from the same source.

26 75. The principals of KIM SENG and GREAT RIVER are acquainted with  
27 each other. GREAT RIVER has known about KIM SENG's use of the words QUE  
28 HUONG for food products for the past 17 years. Despite this knowledge, GREAT

1 RIVER has never objected to, nor taken any action to restrict KIM SENG's use of  
2 the words QUE HUONG until recently.

3 76. KIM SENG does not believe that its use of the term QUE HUONG in  
4 connection with the sale and distribution of any of its products, infringes on any  
5 valid, enforceable trademark rights of GREAT RIVER. Nevertheless, the  
6 accusations and the demands of GREAT RIVER have created an actual controversy  
7 within the jurisdiction of this Court pursuant to 28 U.S.C. §§2201 and 2202.

8 77. An actual controversy has arisen and now exists between KIM SENG  
9 and GREAT RIVER in connection with their respective trademark rights in and to  
10 the mark QUE HUONG. KIM SENG contends that:

11 a. GREAT RIVER has no enforceable trademark rights in the term  
12 QUE HUONG.

13 b. KIM SENG's use of the term QUE HUONG is not likely to  
14 cause confusion, mistake, or deception as to the source, origin, sponsorship, or  
15 quality of KIM SENG's goods.

16 c. KIM SENG's use of the term "Que Hong" is not likely to cause  
17 confusion as to the source or quality of KIM SENG's goods.

18 d. KIM SENG's use of the term QUE HUONG does not constitute  
19 trademark infringement, trademark dilution, false designation of origin, or common  
20 law unfair competition.

21 e. GREAT RIVER's delay in asserting any objection to KIM  
22 SENG's use of the words QUE HUONG for a period of approximately twelve (17)  
23 years, has caused KIM SENG to change its position to its detriment in reliance on  
24 GREAT RIVER's inaction.

25 f. KIM SENG's use of the words QUE HUONG is protected under  
26 the fair use doctrine.

27 g. KIM SENG's rights in the words QUE HUONG are superior to  
28 those of GREAT RIVER, at least with respect to certain goods and channels of

1 distribution.

2 78. KIM SENG is informed and believes that GREAT RIVER disputes the  
3 above contentions. Thus, a judicial declaration is necessary and proper so that the  
4 parties may ascertain their respective rights and obligations.

5 **WHEREFORE**, KIM SENG prays for relief as follows:

6 1. For the entry of a judgment declaring:

7 a. That KIM SENG's use of the words QUE HUONG in  
8 connection with either of its registered trademarks, as alleged above, or otherwise,  
9 does not infringe any valid rights GREAT RIVER may have in or to the words  
10 QUE HUONG under the laws of the United States or under the laws of the State of  
11 California;

12 b. That KIM SENG's use of the words QUE HUONG in  
13 connection with either of its registered trademarks, as alleged above, or otherwise,  
14 does not constitute unfair competition under the laws of the United States or under  
15 the laws of the State of California;

16 c. That KIM SENG's rights in and to the words QUE HUONG are  
17 superior to the rights, if any, of GREAT RIVER, at least with respect to certain  
18 goods and channels of trade;

19 d. That GREAT RIVER's objections to KIM SENG's use of the  
20 words QUE HUONG are barred by the doctrine of laches;

21 e. That GREAT RIVER's objections to KIM SENG's use of the  
22 words QUE HUONG are barred by the doctrine of waiver;

23 f. That GREAT RIVER's objections to KIM SENG's use of the  
24 words QUE HUONG are barred by the doctrine of estoppel;

25 g. That GREAT RIVER'S objections to KIM SENG'S use of the  
26 words QUE HUONG are barred because GREAT RIVER has acquiesced in KIM  
27 SENG's use of those words for a period of 17 years; and,

28 h. That KIM SENG's use of the words QUE HUONG is protected


1 under the fair use doctrine.

2 2. For the entry of a permanent injunction enjoining GREAT RIVER  
3 from contacting any of KIM SENG's customers and/or from prosecuting any  
4 trademark infringement or unfair competition litigation against them based upon  
5 their sale of KIM SENG products bearing the words QUE HUONG; and,

6 3. For such further and other relief as the Court may deem just and  
7 proper.

8  
9  
10 Dated: May 20, 2005

ROPERS, MAJESKI, KOHN &  
BENTLEY

11  
12 By:   
13 ERNEST E. PRICE  
14 TRUC M. LUU  
15 Attorneys for Defendant  
16 KIM SENG COMPANY, A  
17 CALIFORNIA CORPORATION;  
18 AND DOES 1 THROUGH 10,  
19 INCLUSIVE  
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26  
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28

**EXHIBIT A**

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,099,092

**United States Patent and Trademark Office**

Registered Sep. 23, 1997

**TRADEMARK  
PRINCIPAL REGISTER**

**QUE HUONG**

KIM-SENG COMPANY (CALIFORNIA CORPORATION)  
4408 WORTH STREET  
LOS ANGELES, CA 90063

THE ENGLISH TRANSLATION OF "QUE HUONG" IS "ONE'S NATIVE LAND" OR "COUNTRY", OR "ONE'S FATHERLAND".

FOR: SAUCES, FISH SAUCE, RICE NOODLES AND RICE STICKS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-0-1993; IN COMMERCE 3-0-1993.

SER. NO. 75-133,449, FILED 7-12-1996.

GEOFFREY FOSDICK, EXAMINING ATTORNEY

EXHIBIT B



Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,311,982

**United States Patent and Trademark Office**

Registered Jan. 25, 2000

**TRADEMARK  
PRINCIPAL REGISTER**



KIM SENG COMPANY (CALIFORNIA CORPORATION)  
4408 WORTH STREET  
LOS ANGELES, CA 90063

FOR: STAPLE FOODS, NAMELY, RICE NOODLES, RICE STICKS, AND VERMICELLI, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-0-1988; IN COMMERCE 1-0-1988.

OWNER OF U.S. REG. NO. 2,099,092.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BRAND", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "OLDMAN QUE HUONG BRAND", AND THE DISTINCTIVE LOGO OF A BEARDED FARMER.

THE ENGLISH TRANSLATION OF THE NON-ENGLISH WORDING ON THE SPECIMENS IS AS FOLLOWS: "RICE NOODLES FROM QUE-LAM, THE OLD MAN FROM THE NATIVE LAND BRAND. SPECIALLY-MADE BIG STRAND."

SER. NO. 75-662,906, FILED 3-18-1999.

PAULA MAHONEY, EXAMINING ATTORNEY

1 CASE NAME: DEREK & CONSTANCE LEE CORPORATION v. KIM SENG  
2 COMPANY

3 ACTION NO.: CV 05-3535 GPS (JTLx)

4 PROOF OF SERVICE

5 I am a citizen of the United States. My business address is 515 South Flower Street, Suite  
6 1100, Los Angeles, CA 90071. I am employed in the County of Los Angeles where this service  
7 occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar  
8 with my employer's normal business practice for collection and processing of correspondence for  
9 mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with  
10 the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

11 On the date set forth below, following ordinary business practice, I served a true copy of  
12 the foregoing document(s) described as:

13 ANSWER TO COMPLAINT AND COUNTER CLAIM

14 ☒ (BY FAX) by transmitting via facsimile the document(s) listed above to the  
15 fax number(s) set forth below, or as stated on the attached service list, on  
16 this date before 5:00 p.m.

17 ☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to  
18 be placed in the United States mail at Los Angeles, California.

19 ☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand  
20 this date to the offices of the addressee(s).

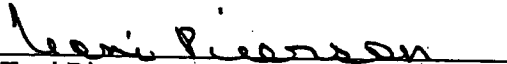
21 ☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an  
22 overnight delivery carrier with delivery fees provided for, addressed to the  
23 person(s) on whom it is to be served.

24 Gary Freedman, Esq. (SBN 49922)  
25 Law Offices of Gary Freedman  
26 1149 Third Street, Suite #200  
27 Santa Monica, CA 90403  
28 Phone: (310) 576-2444  
Fax: (310) 576-2440

Peter W. Ross, Esq. (SBN 109741)  
N. Kemba Extavour  
Browne & Woods, LLP  
450 North Roxbury Drive, Seventh Floor  
Beverly Hills, CA 90210-4231  
Phone: (310) 274-7100  
Fax: (310) 275-5697

29 ☒ (Federal) I declare that I am employed in the office of a member of the bar of  
30 this court at whose direction the service was made.

31 Executed on May 20, 2005, at Los Angeles, California.

32   
33 Toni Pierson

1 **CASE NAME: DEREK & CONSTANCE LEE CORPORATION v. KIM SENG**  
2 **COMPANY**

3 **ACTION NO.: CV 05-3635 GPS (JTLx)**

4 **PROOF OF SERVICE**

5 I am a citizen of the United States. My business address is 515 South Flower Street, Suite  
6 1100, Los Angeles, CA 90071. I am employed in the County of Los Angeles where this service  
7 occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar  
8 with my employer's normal business practice for collection and processing of correspondence for  
9 mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with  
10 the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

11 On the date set forth below, following ordinary business practice, I served a true copy of  
12 the foregoing document(s) described as:

13 **MOTION FOR SUSPENSION OF PROCEEDING PENDING OUTCOME OF FEDERAL**  
14 **CIVIL ACTION**

15 ☒ (BY FAX) by transmitting via facsimile the document(s) listed above to the  
16 fax number(s) set forth below, or as stated on the attached service list, on  
17 this date before 5:00 p.m.

18 ☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to  
19 be placed in the United States mail at Los Angeles, California.


20 ☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand  
21 this date to the offices of the addressee(s).

22 ☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an  
23 overnight delivery carrier with delivery fees provided for, addressed to the  
24 person(s) on whom it is to be served.

25 GARY J. NELSON  
26 CHRISTIE, PARKER & HALE  
27 P. O. Box 7068  
28 Pasadena, CA 91109-7068

29 ☒ (Federal) I declare that I am employed in the office of a member of the bar of  
30 this court at whose direction the service was made.

31 Executed on November 30, 2005, at Los Angeles, California.

32   
33 CARMELA ELIAS

34 **ENVELOPE(S):**